APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT DATED AND DECIDED APRIL 6, 2001

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 00-1473

LOU MAZZEI, TRUSTEE OF THE LOCAL 786 BUILDING MATERIAL TEAMSTERS AND HELPERS WELFARE FUND AND LOCAL 786 BUILDING MATERIAL TEAMSTERS AND HELPERS PENSION FUND,

Plaintiff-Appellant,

v.

ROCK-N-AROUND TRUCKING, INC., an Illinois corporation,

Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. No. 99 C 1975 — **David H. Coar**, *Judge.*

ARGUED OCTOBER 27, 2000 — DECIDED APRIL 6, 2001

Before EASTERBROOK, KANNE, and ROVNER, *Circuit Judges.*

KANNE, *Circuit Judge.* Lou Mazzei, Trustee of the Local 786 Building Material Teamsters and Helpers Welfare Fund

and Local 786 Building Material Teamsters and Helpers Pension Fund ("the Funds"), filed suit against Rock N' Around Trucking ("RNA"), claiming that pursuant to the terms of the collective bargaining agreement (the "CBA") RNA entered into with the International Brotherhood of Teamsters, Local 786 ("Local 786"), RNA owes the Funds $669,030 in contributions on behalf of its owner-drivers. The district court found that the CBA obligates RNA to contribute to the Funds on behalf of its owner-drivers. The court concluded, however, that such contributions would violate section 302 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 186, because RNA's owner-drivers are independent contractors. Therefore, the court granted RNA's motion for summary judgment. Mazzei now appeals the district court's decision. Because we agree with the district court's conclusion that the contributions called for in the CBA are illegal under section 302 of the LMRA, we affirm its decision granting RNA's motion for summary judgment.

I. History

RNA is an Illinois Corporation that provides trucking services to the construction industry. In April 1996, RNA entered into the CBA with the Local 786, a labor union representing truck drivers and yard employees engaged in the processing and delivery of building materials. The controversy in this case centers around what obligation, if any, RNA has, under the terms of the CBA, to contribute to the Funds on behalf of its owner-drivers, those individuals who own and drive their own trucks.

Appendix A

Most of RNA's hauling operations are performed by owner-drivers. These individuals sign "Equipment Leases" with RNA and operate under RNA's license to operate as a motor carrier.[1] The lease term is for three years, though either party may terminate the lease at any time without penalty. Additionally, owner-drivers are free to lease their services to other carriers during this term, and they can refuse to work for RNA for any reason. Owner-drivers working for RNA store and maintain their own trucks, pay for their own gas, pay their own taxes, and provide their own insurance coverage. With regard to compensation, owner-drivers are paid on a Form 1099 basis and receive a gross percentage of the payments RNA receives from its customers, rather than an hourly wage.

An owner-driver who accepts an assignment from RNA is told the location and time of the pick-up and/or delivery of his or her respective load. When an owner-driver accepts an assignment from RNA, that owner-driver is required by Illinois law to place a sign on the side of the truck cab that reads: "Leased To & Operated By Rock N' Around Trucking, Inc." This sign must be covered up or removed, however, whenever an owner-driver is not performing work for RNA

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1. RNA is licensed by the Illinois Commerce Commission (the "ILCC") to operate as a motor carrier. Some of RNA's owner-drivers obtain their own licenses from the Illinois Commerce Commission. These owner-drivers operate under their own licenses and do not sign leases with RNA. The disputed contributions in this case, however, deal only with those "non- certified" owner-drivers working for RNA, and therefore, our references to owner-drivers only include noncertified owner-drivers.

under RNA's ILCC license; and owner-drivers must return these signs along with all other RNA materials at the end of a lease term.

The Funds are multiemployer benefit plans as defined in 29 U.S.C. § 1003(37)(A), and therefore, they are governed by the Employee Retirement Income Security Act of 1974 ("ERISA"). 29 U.S.C. § 1003(a). In the course of auditing employers contributing to the Funds, Local 786 concluded that RNA owed $669,030 in delinquent contributions on behalf of its owner-drivers. Mazzei, a Trustee of the Funds, filed suit in the Northern District of Illinois pursuant to section 502 of ERISA, 29 U.S.C. § 1132, alleging that RNA violated section 515 of ERISA, 29 U.S.C. § 1145, by failing to make contributions required by the CBA on behalf of its owner-drivers. RNA disputed Mazzei's claim, advancing three reasons why it should not be required to make these contributions: (1) the contract language is ambiguous and does not require contributions; (2) the owner-drivers signed waivers of contributions, and thus, none are required; and (3) the owner-operators are independent contractors and not employees, thereby making the contributions illegal. The parties filed cross-motions for summary judgment. The district court granted RNA's motion, finding that although the CBA unambiguously obligates RNA to contribute to the Funds for each of its owner-drivers, the form of contribution called for in the CBA is illegal under section 302 of the LMRA because RNA's owner-drivers are independent contractors. 29 U.S.C. § 186. Mazzei now appeals the court's decision, challenging its determination that the owner-drivers are independent contractors instead of employees and its conclusion that the contributions called for in the CBA violate federal law.

Appendix A

II. Analysis

A. Standard of Review

We review the district court's decision to grant RNA's motion for summary judgment *de novo*. *See Contreras v. Suncast Corp.*, 237 F.3d 756, 759 (7th Cir. 2001). Summary judgment is proper when the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." FED. R. CIV. P. 56(c); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). A genuine issue of material fact exists, and summary judgment is improper, if a reasonable jury could return a verdict in favor of the nonmoving party. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). In making this determination, we review the record in the light most favorable to the non-moving party, in this case Mazzei, drawing all reasonable inferences in his favor. *See Amadio v. Ford Motor Co.*, 238 F.3d 919, 921 (7th Cir. 2001); *see also Liberty Lobby, Inc.*, 477 U.S. at 255.

B. RNA's Obligation to Contribute Under the CBA

Mazzei alleges that RNA's failure to contribute to the Funds on behalf of its owner-drivers violates the terms of the CBA and section 515 of ERISA. Section 515 "requires employers to comply with the terms of their agreements to make contributions to funds," *Cent. States, Southeast &*

Southwest Areas Pension Fund v. Transp. Inc., 183 F.3d 623, 627 (7th Cir. 1999), to the extent that such terms are not inconsistent with the law.[2] *See Cent. States, Southeast & Southwest Areas Pension Fund v. Hartlage Truck Serv., Inc.*, 991 F.2d 1357, 1360 (7th Cir. 1993). Thus, we must first review the language of the CBA and determine whether it obligates RNA to contribute to the Funds on behalf of its owner-drivers. *See Ill. Conference of Teamsters & Employers Welfare Fund v. Mrowicki*, 44 F.3d 451, 458 (7th Cir. 1994).

The district court found that the terms of the CBA unambiguously obligates RNA to contribute to the Funds on behalf of its owner-drivers. *See Mazzei v. Rock-N-Around Trucking, Inc.*, No. 99 C 1975, 2000 WL 152137, *3-5 (N.D. Ill. Feb. 4, 2000). RNA disputes the district court's finding with respect to this issue. Instead, RNA contends that the CBA unambiguously establishes that RNA does not have to contribute to the Funds on behalf of its owner-drivers.

We review the district court's interpretation of the CBA de novo. *See Cent. States, Southeast & Southwest Areas Pension Fund v. Kroger Co.*, 226 F.3d 903, 910 (7th Cir.

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2. Section 515 states:

> Every employer who is obligated to make contributions to a multiemployer plan under the terms of the plan or under the terms of a collectively bargained agreement shall, to the extent not inconsistent with law, make such contributions in accordance with the terms and conditions of such plan or such agreement.

29 U.S.C. § 1145.

2000). We will enforce the terms of a collective bargaining agreement if those terms are unambiguous. *See Young v. N. Drury Lane Prods.*, 80 F.3d 203, 205 (7th Cir. 1996). The CBA is unambiguous if it "is susceptible to only one reasonable interpretation." *Moriarty v. Svec*, 164 F.3d 323, 330 (7th Cir. 1998). Furthermore, if we find no ambiguity in the terms of the CBA, then, in determining its meaning as a matter of law, we need not review extrinsic evidence suggesting how those terms should be interpreted. *See Mrowicki*, 44 F.3d at 459.

Article 16 of the CBA, entitled "Health and Welfare and Pension," obligates RNA to contribute "into a trust . . . for the payment of Health and Welfare or Pension benefits . . . for an employee covered by this Agreement." In Article 1, "employee" is defined as "the employee or employees in the classifications of work covered" by the CBA. While this definition does not address whether RNA's owner-drivers are considered covered employees, Article 24, entitled "Owner-Drivers," explains that "Owner-Drivers operating their own vehicles and who are not certified carriers with proper Illinois Commerce Commission authority *are covered within the terms and conditions of this Agreement, including* Union security, hours, wages, overtime, *Health & Welfare and Pension* and working conditions." CBA § 24.1 (emphasis added). Article 24 clearly extends RNA's responsibilities under Article 16, Health and Welfare or Pension, to the terms of employment for RNA's owner-drivers. Therefore, we find that there can be no mistaking the fact that the CBA attempts to impose an obligation on RNA to contribute to the Funds for each of its owner-drivers.

Furthermore, we agree with the district court's determination that this interpretation of the CBA is "straightforward and not inconsistent with other provisions therein." *Mazzei*, 2000 WL 152137, at *5. RNA disagrees, arguing that sections 24.1-4 and 24.3 conflict with our interpretation and demonstrate that the terms of the CBA do not obligate it to contribute to the Funds on behalf of its non-certified owner-drivers. Section 24.1-4 explains that noncertified owner-drivers, the group of individuals at issue in this case

> shall receive the full wages, supplemental allowance, and all working conditions provided in this Agreement and shall receive as a minimum salary after payment of all direct and indirect operating expenses (including contributions to the Health & Welfare Fund and Pension Fund) the sum equal to the amount he would have received for the time he would have worked as an hourly or percentage rated driver.

CBA § 24.1-4. This provision concerns the income of the owner-drivers and tells us nothing about who must contribute to the Funds. Thus, it is not in tension with our finding that 24.1 places the obligation to contribute to the Funds on RNA. Section 24.3, which addresses the terms of employment for a different group of drivers than the owner-drivers at issue in this case, states that

> [c]ompanies who hire owner operators who are members of the Union and are Certified Carriers with proper Illinois Commerce Commission

> authority and who drive their own trucks and perform work exclusively for the Employer shall be covered by Article 16 – Health & Welfare and Pension and it shall be the Employer's responsibility to make contributions on their behalf.

CBA § 24.3. RNA contends that the use of such specific language in defining its duty with respect to the certified owner-operators, in contrast with the lack of such language in section 24.1, is a clear indication that RNA has no such duty with respect to the owner-drivers at issue in this case. We do not agree. While section 24.3 can be read to be a more specific explanation of RNA's obligation to contribute than section 24.1, it does not contradict or detract from the clear directive of 24.1 incorporating RNA's obligations under Article 16 into the terms of employment for the noncertified owner-drivers at issue in this case. Thus, we agree with the district court's conclusion that the CBA unambiguously requires RNA to contribute to the Funds on behalf of its owner-drivers.

C. Legality of the Contributions Called for in the CBA

Having found that the CBA obligates RNA to contribute to the Funds on behalf of its owner-drivers, we must now evaluate the legality of these contributions under the LMRA. When Congress was formulating the LMRA, it was concerned "with corruption of collective bargaining through bribery of employee representatives by employers, with extortion by employee representatives, and with the possible

abuse by union officers of the power which they might achieve if welfare funds were left to their sole control." *Arroyo v. United States*, 359 U.S. 419, 425-26, 79 S. Ct. 864, 3 L. Ed. 2d 915 (1959). To address these concerns, Congress included section 302(a)(1) of the LMRA, which prohibits employers from paying "any representative of any of his employees." 29 U.S.C. § 186(a)(1). However, because Congress had to balance its fears of misuse and bribery with organized labor's demand for a system of employee welfare funds financed by employer contributions and administered by union officials, *see Arroyo*, 359 U.S. at 426, the LMRA provides an exception to this prohibition "with respect to money . . . paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer." 29 U.S.C. § 186(c)(5). This exception is limited, however, as it does not allow an employer to contribute to a trust fund "on behalf of," or "for the benefit of," individuals that are not employees of the contributing employer. *See Ill. Conference of Teamsters & Employers Welfare Fund v. Mrowicki*, 44 F.3d 451, 460 (7th Cir. 1994) (citing *Walsh v. Schlecht*, 429 U.S. 401, 407, 97 S. Ct. 679, 50 L. Ed. 2d 641 (1977)). Nevertheless, in *Walsh v. Schlecht*, 429 U.S. at 407, the Supreme Court held that the LMRA permits employer trust fund contributions, regardless of the employment status of the employer's workers, when the amounts of such contributions are measured by the number of hours worked by that employer's workers as opposed to being given simply "on behalf of" or "for the benefit of" the employer's workers. *Id.*; *see also Mrowicki*, 44 F.3d at 461 (citing *Walsh*, 429 U.S. at 407-10) ("[A] clause in a collective bargaining agreement making an employer liable for payment of trust fund contributions

based on the hours worked at a job site by individuals other than its own employees [does] not violate § 302 of the LMRA."); *Todd v. Benal Concrete Constr. Co.*, 710 F.2d 581, 583 (9th Cir. 1983) (explaining that in *Walsh* the Court "held that contributions may reflect work performed by employees of . . . independent subcontractors, but only if the amounts are 'measured by' the number of hours worked"). Therefore, we will first examine the manner in which the CBA requires RNA to contribute to the Funds to determine if such contributions are permissible regardless of the employment status of RNA's owner-drivers.

Section 16.1 of the CBA obligates RNA to contribute fixed weekly amounts, set out in section 16.2, to a trust "for the payment of Health and Welfare or Pension benefits . . . for an employee covered by this Agreement, in accordance with the requirements set forth in the appropriate Appendix of this Article." Appendix A of the CBA, entitled "Health and Welfare," explains that RNA is required to contribute the amounts called for in section 16.2 to the Welfare Fund "for each employee covered by this Agreement who performs work on any two calendar days in any calendar week, *regardless of the number of hours worked.*" CBA App. A (emphasis added). Similarly, Appendix B, entitled "Pension," requires RNA to contribute to the Pension Fund according to the schedule in section 16.2 "for each employee who performs work on any two days in any calendar week, *regardless of the number of hours worked.*" CBA App. B (emphasis added). Thus, RNA's contributions are to be made "for each employee" when that employee works at least two days of a work week. The measure of these contributions has no relation to the number of hours these individuals

actually work, however, as the amounts are provided for in the CBA. Therefore, this type of contribution is not like the employer contributions the Supreme Court found to be permissible under the LMRA in *Walsh*, which were based on the number of hours worked by the employer's workers. *See Walsh*, 429 U.S. at 407-10.

Because the contributions RNA is required to make under the terms of the CBA are "for each employee," and not like those upheld in *Walsh*, the employment status of RNA's owner-drivers will determine the legality of the contributions under the LMRA. As previously mentioned, employer payments to a trust for the exclusive benefit of that employer's employees are permissible under the LMRA. 29 U.S.C. § 186(c)(5). Thus, if RNA's owner-drivers are employees of RNA, the contributions would fall under this exception and be permissible under the LMRA. If the owner-drivers are independent contractors, however, because the LMRA "excludes any person having the status of independent contractor from the statutory definition of 'employee,' " *Mrowicki*, 44 F.3d at 460, then any RNA contribution to the Funds on behalf of the owner-drivers would violate section 302 of the LMRA. Thus, we must determine whether these owner-drivers are employees of RNA.

D. The Employment Status of RNA's Owner-Drivers

In *Nationwide Mutual Insurance Co. v. Darden*, 503 U.S. 318, 112 S. Ct. 1344, 117 L. Ed. 2d 581 (1992), the Supreme Court adopted "a common-law test for determining who

qualifies as an 'employee' under ERISA." *Id.* at 323. While the Court listed twelve factors to be considered when making this determination, it noted that the common law test had "no shorthand formula or magic phrase that can be applied to find the answer," and that "all of the incidents of the relationship must be assessed and weighed with no one factor being decisive." *Id.* at 324 (citations omitted). Prior to the Court's decision in *Darden*, we applied our own five factor analysis to determine an individual's employment status. *See Knight v. United Farm Bureau Mut. Ins.*, 950 F.2d 377, 378-79 (7th Cir. 1991). Like the Supreme Court's approach in *Darden*, our analysis recognizes that " '[o]f several factors to be considered, the employer's right to control is the most important when determining whether an individual is an employee or an independent contractor.' " *Compare EEOC v. N. Knox Sch. Corp.*, 154 F.3d 744, 747 (7th Cir. 1998) (quoting *Knight*, 950 F.2d at 378) *with Darden*, 503 U.S. at 323 ("In determining whether a hired party is an employee under the general common law of agency, we consider the hiring party's right to control the manner and means by which the product is accomplished.") (citations omitted). Since *Darden*, we have concluded that the factors described by the Court in that decision are adequately subsumed within our five-factor analysis. *See Alexander v. Rush N. Shore Med. Ctr.*, 101 F.3d 487, 492 n.1 (7th Cir. 1996). Therefore, we will determine the employment status of RNA's owner-drivers within the framework of our *Knight* analysis.

In evaluating the employment status of RNA's owner-drivers, we must examine the following factors:

> (1) the extent of the employer's control and supervision over the worker, including directions on scheduling and performance of work, (2) the kind of occupation and nature of skill required, including whether skills are obtained in the workplace, (3) responsibility for the costs of operation, such as equipment, supplies, fees, licenses, workplace, and maintenance of operations, (4) method and form of payment and benefits, and (5) length of job commitment and/or expectations.

Knight, 950 F.2d at 378-79. When a district court uses our five-factor analysis to determine an individual's employment status, we review that court's factual determinations for clear error. *See Aberman v. J. Abouchar & Sons, Inc.*, 160 F.3d 1148, 1150 (7th Cir. 1998); *see also Ost v. W. Suburban Travelers Limousine*, 88 F.3d 435, 438 (7th Cir. 1996). Because our analysis subsumes the factors set out in *Darden*, *see N. Knox Sch. Corp.*, 154 F.3d at 747, we will also review the factual determinations made by the district court using the Supreme Court's approach in *Darden* for clear error.

Applying the first factor of our analysis, "the extent of the employer's control and supervision over the worker, including directions on scheduling and performance of work," it is clear that RNA exerted very little control or supervision over its owner-drivers. Mazzei disagrees, contending that RNA's ability to tell owner-drivers where and when to pick up and/or deliver a load of materials is an indication of significant control. Although Mazzei accurately describes RNA's ability to instruct owner-drivers who accept an assignment from RNA, the control RNA exercises over

its owner-drivers amounts to little more than the basic level of supervision required to ensure that the arrangement between RNA and its owner-drivers is of some value to RNA. Additionally, other facts further exhibit the minimal amount of control RNA exercises over its owner-drivers. First, these individuals own and drive their own trucks. Second, although owner-drivers sign a lease with RNA for a period of three years, they can refuse to work for RNA at any time and for any reason, they can work for other companies at any time, and they can terminate the lease with RNA at any time and for any reason without penalty. In this respect, RNA's owner-drivers are similar to the limousine drivers that we found to be independent contractors in *Ost v. W. Suburban Travelers Limousine*, 88 F.3d 435 (7th Cir. 1996). The drivers in *Ost*, like RNA's owner-drivers, "supplied their own vehicles," and "were able to choose to work whatever days they preferred, . . . were free to refuse any assignments they wished . . . and could work for dispatching services other than West Suburban." *Id.* at 438. We held that "each of these facts indicates that the manner in which the drivers performed their services for West Suburban was primarily within their own control." *Id.* Thus, the control RNA exercises over its owner-drivers, or the lack thereof, is consistent with that found in an employer-independent contractor relationship.

We have found that the second factor, "the kind of occupation and nature of skill required, including whether skills are obtained in the workplace," favors "a finding of neither independent contractor nor employee" when dealing with individuals similar to RNA's owner-drivers "because professional drivers . . . could be either employees or independent contractors." *N. Knox Sch. Corp.*, 154 F.3d at 749.

In terms of our third factor, "responsibility for the costs of operation, such as equipment, supplies, fees, licenses, workplace, and maintenance of operations," the facts of this case indicate that RNA's owner-drivers are independent contractors. In addition to owning and driving their own trucks, owner-drivers provide storage for their trucks, are responsible for the maintenance of their trucks, pay for their own gas, and pay for their trucks to be insured. RNA's owner-drivers are in this respect, therefore, very much like the school bus drivers we found to be independent contractors in *North Knox School Corp.*, 154 F.3d at 751. The bus drivers in *North Knox*, like RNA's owner-drivers, "were required to supply their own buses and absorb all costs such as insurance and maintenance." *Id.* at 749. We found these facts to be "a strong indication that the drivers were independent contractors." *Id.*

The fourth factor of our analysis, "the method and form of payment and benefits," also suggests that RNA's owner-drivers are independent contractors. The owner-drivers are paid on a Form 1099 basis, which Mazzei acknowledges in his brief is designated as non-employee compensation, and which we have held "would be appropriate for independent contractors." *N. Knox Sch. Corp.*, 154 F.3d at 750. Additionally, the owner-drivers pay their own taxes and receive a gross percentage of the money paid to RNA by its clients as opposed to receiving an hourly wage.

Finally, "the length of job commitment and/or expectations," also implies that RNA's owner-drivers are independent contractors. As we mentioned earlier in examining the extent of RNA's control over its owner-

drivers, these individuals each sign an Equipment Lease with RNA for a period of three years. However, being able to: (1) cancel the lease at any time and for any reason without penalty; (2) work whenever he or she wants; and (3) work for whomever he or she wants, can hardly be characterized as the type of commitment consistent with that of an employer-employee relationship.

In arguing that the owner-drivers are employees, Mazzei draws our attention to several sections of the CBA that treat the owner-drivers as employees of RNA. Specifically, Mazzei points to language in the contract stating that RNA's owner-drivers are to receive overtime, vacation, and holiday pay, and that they will have set starting times and hours of work. Mazzei contends that independent contractors do not receive these types of benefits, and that these factors, combined with RNA's ability to instruct those owner-drivers who accept assignments from RNA, demonstrate that the owner-drivers are employees. We find this argument to be unpersuasive. "Contractual language alone cannot transform a contractor/independent contractor relationship into an employer/employee relationship." *Todd v. Benal Concrete Constr. Co.*, 710 F.2d 581, 584 (9th Cir. 1983). To determine the employment status of an individual or group, we must, as we have in this case, evaluate the actual employment relationship. We have already explained that the control exercised by RNA over its owner-drivers is minimal. Additionally, Mazzei presents no evidence that RNA's owner-drivers have received any of the payments mentioned in the sections of the CBA he asks us to review. Without more, and based on our above analysis, we conclude that the owner-drivers working for RNA are independent contractors

Appendix A

Given our determination that RNA's owner-drivers are independent contractors, the present case bares a striking similarity to the Ninth Circuit's decision in *Todd v. Benal Concrete Construction Co.*, 710 F.2d 581. In *Benal*, the terms of a collective bargaining agreement explained that when individuals referred to as owner-operators performed work for Benal that was covered by the terms of the agreement, those individuals "shall become employees." *Id.* at 582. The practical effect of this language was that Benal would thereafter be obligated to contribute "on behalf of" these owner-operators to local union trust funds. Reviewing not only the language of the contract, but also the actual working relationship between Benal and the owner-operators, the court determined that the owner-operators were independent contractors. Because the contributions Benal was obligated to make were not based on the hours worked by these non-employees, like the contributions upheld in *Walsh*, but instead were to be made "on behalf of" the owner-operators, the court concluded that Benal could not be required to make these contributions, as they would violate section 302 of the LMRA. *See id.* at 584.

Like Benal, RNA cannot be required to contribute to the Funds for each of the owner-drivers, whom we have determined are independent contractors, when those contributions are not based on the number of hours worked. Therefore, we agree with the district court's conclusion that while the terms of the CBA require RNA to contribute to the Funds on behalf of its owner-drivers, the manner in which these contributions are called for violates the LMRA because the owner-drivers are independent contractors.

Appendix A

III. Conclusion

For the reasons stated above, we AFFIRM the district court's decision to grant RNA's motion for summary judgment.

A true Copy:

Teste:

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Clerk of the United States Court of Appeals for the Seventh Circuit

APPENDIX B — MEMORANDUM OPINION AND ORDER AND JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION DATED FEBRUARY 1, 2000

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 99C 1975

HONORABLE DAVID H. COAR

LOU MAZZEI, Trustee of the Local 786 Building Material Teamsters and Helpers Welfare Fund and Local 786 Building Material Teamsters and Helpers Pension Fund,

Plaintiff,

v.

ROCK-N-AROUND TRUCKING, INC.,
an Illinois Corporation,

Defendant.

MEMORANDUM OPINION AND ORDER

Lou Mazzei, Trustee of the Local 786 Building Material Teamsters and Helpers Welfare Fund and Local 786 Building Material Teamsters and Helpers Pension Fund ("the Funds") filed suit against Rock N' Around Trucking, Inc., ("RNA") pursuant to the Employee Retirement Income Security Act

of 1974, as amended ("ERISA"). The Funds allege that RNA failed to make contributions of $669,030 on behalf of owner-drivers who worked for RNA. Two motions are before this Court: RNA's motion for summary judgment and the Funds' cross-motion for summary judgement. For the reasons discussed below, RNA's motion is granted and the Funds' motion is denied.

I. Factual Background

The Funds are multi-employer benefit plans governed by ERISA. 29 U.S.C. § 1002(3), (37). RNA provides trucking services to the construction industry. In April 1996, RNA entered into a collective bargaining agreement ("CBA") with the International Brotherhood of Teamsters, Local 786 ("Local 786"). The underlying dispute in this case centers on RNA's failure, in contravention to its alleged obligation under the CBA, to contribute to the Funds on behalf of owner-drivers.

The majority of RNA's hauling operations are performed by owner-drivers. Owner-drivers, or owner-operators, own their own trucks and drive their own vehicles. They sign leases with RNA to work for a set term of three years, but the lease may be terminated at will by either party without penalty. Owner-drivers are free to lease their services to other carriers during the term of their RNA lease, and they can and do refuse to work for RNA for any reason. It is undisputed that owner-drivers own their own trucks, provide for storage of their own trucks, take responsibility for maintenance of the trucks, pay for their own gas, pay their own taxes, and provide their own insurance coverage. Owner-

drivers are paid on a Form 1099 basis and do not receive an hourly wage; rather, they are paid a gross percentage of the amount paid to RNA by its customers. Owner-drivers also sign independent contractor agreements with RNA.

RNA directs owner-drivers who accept assignments to the location and time of the pickup and/or delivery of his load. When owner-drivers lease their services to RNA and operate under RNA's certificate of authority, they are provided with signs to be placed on the side of their truck cab. The sign reads: "Leased To & Operated By Rock N' Around Trucking, Inc." When leased owner-operators are not performing work for RNA under RNA's ILCC license, the signs are to be removed or covered up. The signs, and other RNA materials are returned to RNA at the end of a lease term.

Local 786, in the course of auditing employers contributing to the Funds, found that RNA owed $669,030 in delinquent contributions for the period May 15, 1999 through April 30, 1999. Twenty-two of the owner-drivers for whom contribution is sought, were, at all relevant times, members of Local 786 who had entered into CBA's with Local 786 and had leased their services as well as their trucks to RNA. The remaining owner-drivers on whose behalf the Funds seek contributions constitute members of Local 731.[1] None of the owner-drivers work under the authority of their own ILCC certificates; thus, to be exact, the Funds seek contributions on behalf of non-certified owner-drivers.

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1. RNA operates a "split barn," whereby drivers belong to either Local 786 or Local 731.

Appendix B

II. Summary Judgment Standard

Summary judgment is proper "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); *Cox v. Acme Health Serv., Inc.*, 55 F.3d 1304, 1308 (7th Cir. 1995). A genuine issue of material fact exists for trial when, in viewing the record and all reasonable inferences drawn from it in a light most favorable to the non-movant, a reasonable jury could return a verdict for the non-movant. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 2510 (1986); *Eiland v. Trinity Hosp.*, 150 F.3d 747, 750 (7th Cir. 1998).

The movant bears the burden of establishing that there exists no genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548, 2553 (1986); *Hedberg v. Indiana Bell Tel. Co.*, 47 F.3d 928, 931 (7th Cir. 1995). If the movant meets this burden, the non-movant must set forth specific facts that demonstrate the existence of a genuine issue for trial. Rule 56(e); *Celotex*, 477 U.S. at 324, 106 S. Ct. at 2553. Rule 56(c) mandates the entry of summary judgment against a party "who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and in which that party will bear the burden of proof at trial." *Celotex*, 477 U.S. at 322, 106 S. Ct. at 2552-53. A scintilla of evidence in support of the non-movant's position is not sufficient to oppose successfully a summary judgment motion; "there must be evidence on which the jury could reasonably find for the

[non-movant]." *Anderson*, 477 U.S. at 250, 106 S. Ct. at 2511. Weighing evidence, determining credibility, and drawing reasonable inferences are jury functions, not those of a judge deciding a motion for summary judgment. *Anderson*, 477 U.S. at 255, 106 S. Ct. at 2515.

III. Analysis

Collective Bargaining Agreement

The Funds bring this suit pursuant to § 502 of ERISA, which empowers plaintiffs to bring civil actions to enforce other provisions of ERISA. 29 U.S.C. § 1132. The Funds maintain that RNA violated § 515 of ERISA by failing to make required contributions. Section 515 provides:

> Every employer who is obligated to make contributions to a multiemployer plan under the terms to the plan or under the terms of a collectively bargained agreement shall, to the extent not inconsistent with law, make such contributions in accordance with the terms and conditions of such plan or such agreement. 29 U.S.C. § 1145.

Collective bargaining agreements establish an employer's obligation to pension and welfare funds. *Central States, S.E. and S.W. Areas Pension Fund v. Kroger Co.*, 73 F.3d 727, 730 (7th Cir. 1996). Thus, the CBA takes center stage in this dispute. Summary judgement is particularly appropriate when a dispute concerns an interpretation of a written contract. *Beverage Indus. Local No. 744 Health and*

Welfare Fund v. Quality Beers Ltd. Partnership, 58 F. Supp. 2d 910, 913 (N.D. Ill. 1999) (citing *ICEBU v. Hyster-Yale Materials Handling, Inc.*, 83 F.3d 930, 923-33 (7th Cir. 1996). Where the language of an agreement is unambiguous, its meaning may be determined as a matter of law. *Illinois Conference of Teamsters and Employers Welfare Fund v. Mrowicki*, 44 F.3d 451, 478 (7th Cir. 1994). *See also Young v. North Drury Lane Prod., Inc.*, 80 F.3d 203, 205 (7th Cir. 1996) (noting that the courts "must enforce the terms of a collective bargaining agreement when those terms are unambiguous"). In other words, where the language is clear and thereby susceptible to only one reasonable interpretation, the issue need not be resolved by a trier of fact. *Mrowicki*, 73 F.3d at 732.

In examining ERISA claims, the courts apply federal common law rules of interpretation. *Kroger*, 73 F.3d at 731. The courts look to the plain text of an agreement and assess an agreement in its entirety. *Id.* at 731, 732; *Mrowicki*, 44 F.3d at 458. A cardinal principle of contract construction, and one extended to CBA interpretation, is that "a document should be read to give effect to all of its provisions and to render them consistent with each other." *Quality Beers*, 58 F. Supp. at 914 (quoting *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 63, 115 S. Ct. 1212 (1995)). Accordingly, a CBA should be interpreted so as to reconcile all of the provisions therein and avoid "inconsistencies and redundancies in the language of the agreement." *Id.*; *Mrowicki*, 44 F.3d at 459.

This Court looks initially to the language of the CBA to determine the extent of RNA's obligation to make

contributions to the Funds. *Mrowicki*, 44 F.3d at 458. Article 16 of the CBA, titled Health and Welfare and Pension, requires RNA to contribute into a trust for the payment of health and welfare pension benefits for "employee[s] covered by this Agreement." *See* CBA § 16.1. Article 1 then defines the term employee as "the employee or employees in the classifications of work covered" by the CBA. CBA Art 1. The controversy at hand could be easily settled if owner-drivers could be deemed "employees" under Article 16. Yet the definition enunciated in Article 1 does not provide much, if any, guidance in determining whether owner-drivers are encompassed by this definition.

In fact, owner-drivers are governed by a separate Article pertaining only to them, namely Article 24 titled "Owners-Drivers," which tends to suggest that they are classified into a distinct category separate and apart from employees.[2] Section 24.1 of the CBA reads, in relevant part:

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2. Nor do owner-drivers tend to qualify as employees under the plain meaning of the term. *See Moriarty v. Svec*, 164 F.3d 323, 330 (7th Cir. 1998) (defining "employee" in a CBA by first examining its "ordinary and popular" meaning). "Employee" is ordinarily defined as "one employed by another," which generally "exclude[s] those who work for themselves." *Id.* at 331. Here, RNA presents substantial uncontroverted evidence that indicates that owner-drivers are in fact independent contractors on account of their "leased" status, which gives them a right to provide their services to RNA or any other employer at any time, work for multiple employers at the same time, and accept or decline work assignments from RNA for any reason. That owner-drivers may not be entitled to have RNA make contributions to the Funds on their behalf under the provisions of Article 16, however, does not mean that RNA is not obliged to make such contributions.

Appendix B

> Owner-Drivers operating their own vehicles and who are not certified carriers with proper Illinois Commerce Commission authority [thus, "non-certified owner-drivers"] are *covered within the terms and conditions of this Agreement, including* Union security, hours, wages, overtime, *Health & Welfare and Pension* and working conditions. [emphasis supplied]

This provision, by expressly incorporating Article 16 ("Health and Welfare and Pension"), extends the rights granted to employees onto owner-drivers. In other words, pursuant to § 24.1, RNA must remit payment to the Funds on behalf of owner-drivers in accordance with the provisions set forth in Article 16. The text at issue is subject to only one reasonable interpretation and is therefore conclusive as a matter of law.[3] *Mrowicki*, 44 F.3d at 459.

The Court's construction of the CBA is straightforward and not inconsistent with the other provisions therein. *See id.* For instance, § 24.1-4 provides, also with respect to non-certified owner-drivers:

> Such Owner-Drivers shall receive the full wages, supplemental allowance, and all working conditions provided in this Agreement and shall receive as a minimum salary after payment of all

3. Since there is no ambiguity in the language of the CBA, the Court need not consider, for purposes of construing the CBA, extrinsic evidence relating to the parties' understandings of and practices under the terms of the agreement. *Mrowicki*, 44 F.3d at 459.

> direct and indirect operating expenses (including contributions to the Health & Welfare Fund and Pension Fund) the sum equal to the amount he would have received for the time he would have worked as an hourly or percentage rated driver.

Section 24.1-4 speaks only to the *amount* of net income owed to non-certified owner-drivers. It remains completely silent with regard to which party, the driver or RNA, is obligated to contribute to the Fund on behalf of the driver. Therefore, imputing upon RNA the responsibility of contributing to the Funds does not render any of the provisions of the CBA inconsistent or superfluous. *See Mrowicki*, 44 F.3d at 459.

Furthermore, § 24.3, which refers to certified owner-drivers (distinct from the non-certified owner-drivers on whose behalf the Funds seek contributions), does not undermine this Court's determination. Section 24.3 states:

> Companies who hire owner operators who are members of the Union and are Certified Carriers with proper Illinois Commerce Commission authority and who drive their own trucks and perform work exclusively for the Employer shall be covered by Article 16 — Health & Welfare and Pension and it shall be the Employer's responsibility to make contributions on their behalf.

Indeed, § 24.3 expressly directs RNA to remit payments to the Funds on behalf of certified owner-drivers. Particularly in light of its placement only three paragraphs below § 24.1-4, § 24.3's specific language seems to suggest that § 24.1, with

its less direct language, should be construed so as to discharge RNA of its obligation to the Funds, argues RNA. Yet § 24.1 is clear in imposing upon RNA the obligations set forth in Article 16. See CBA § 24.1 (providing that non-certified owner-drivers are "covered within the terms and conditions of this Agreement, including . . . Health & Welfare and Pension"); Art. 16 (directing employers to contribute to the Funds on behalf of their workers). Therefore § 24.3, which concerns a different category of drivers than the non-certified drivers at issue, is not inconsistent with, nor does it render superfluous this Court's interpretation of § 24.1.

This Court's decision is wholly supported by the Seventh Circuit's decision in *Mrowicki.* 44 F.3d 451. The CBA under scrutiny in that case provided that the "owner-driver shall be carried on the payroll of the Employer as an employee and as such, all the terms and conditions of this Agreement . . . shall be applicable to him." *Id.* at 454 n.6. The CBA also required the employer to contribute a specified amount for each hour worked by an employee. Examining the CBA in its entirety, the Seventh Circuit held that the unambiguous language required the employer to make contributions to the funds in an amount measured by the number of hours worked by the owner-drivers. 44 F.3d at 458-59. Admittedly, the language of the CBA at issue in *Mrowicki* expressly equated owner-drivers with employees, whereas that same language is absent from the CBA in the present case. Yet that distinction is not fatal to this Court's determination in the instant case. The critical language, common to both CBAs, provides that the terms and conditions of the respective CBAs are applicable to the owner-drivers. In effect, this language affords owner-drivers in both cases the status of employee. 44 F.3d at 458.

Appendix B

In summary, the plain meaning of § 24.1 establishes that RNA must make contributions to the Funds on behalf of owner-drivers in accordance with the provisions articulated in Article 16. Yet in the final analysis, the Court's construction of the CBA turns out to be a hollow victory for the Funds.

Labor Management Relations Act

Section 302(a)(1) of the Labor Management Relations Act ("LMRA") prohibits payments by employers to "any representative of any of his employees." 29 U.S.C. § 186(a)(1). The LMRA goes on to delineate exceptions for payments made to trust funds established "for the sole and exclusive benefit of the employees of such employer" for the purpose of providing, inter alia, medical care and pensions. 29 U.S.C. § 186(c)(5). Therefore, the LMRA makes illegal "payments by employers to employee trust funds on behalf of, or for the benefit of, anyone ineligible to receive benefits from those funds." *Mrowicki*, 44 F.3d at 460 (citing *Walsh v. Schlecht*, 429 U.S. 401, 407, 97 S. Ct. 679, 684 (1977)). In contrast, § 302 authorizes an employer to pay contributions to funds measured by the hours worked by individuals, even if they are otherwise ineligible to receive benefits from the funds. 44 F.3d at 461 (summarizing the Supreme Court's ruling in *Walsh*).

Here, the CBA requires RNA to "contribute into a trust . . . for the payment of Health and Welfare or Pension benefits . . . the amounts shown . . . per week for an employee covered by this Agreement in accordance with the requirements set forth in the appropriate Appendix of this Article." CBA

§ 16.1. Appendix A, in turn, provides that RNA shall contribute to the Funds "for each employee covered by this Agreement who performs work on any two calendar days in any calendar week, regardless of the number of hours worked." CBA, § A.1. Under the express terms of the CBA, then, RNA is obligated to remit lump-sum contributions to the Funds for its employees instead of making payments on the basis of hours worked. By divorcing the measure of employer contributions from the number of hours worked, the provisions set forth in this CBA fall outside the scope of employer obligations authorized by § 302 as set forth in *Walsh* and its progeny. 429 U.S. at 410 (holding that an employer's payment of contributions measured by the hours worked by employees ineligible to benefit from the fund comports with § 302). *See, e.g.*, *Mrowicki*, 44 F.3d at 454, 461 (finding no violation of the LMRA where employer agreed under CBA to "contribute to [the Fund a specified dollar amount] for each hour worked by each employee"); *Todd v. Benal Concrete Constr. Co.*, 710 F.2d 581, 584 (9th Cir. 1983) (finding that § 302 proscribes payments made on behalf of owner-operators); *Brogan v. Swanson Painting Co.*, 682 F.2d 807, 809 (9th Cir. 1982) (enforcing a CBA provision requiring contributions measured by number of hours worked).

That the contributions sought in this case are not measured by the number of hours worked, however, does not necessarily mean that the contributions are barred by § 302. Indeed, the language of the CBA at issue makes clear that payments are sought for the benefit of employees, but that is still within the bounds of § 302 as long as the individuals for whom the contributions are sought are eligible to receive benefits from the Funds as employees of RNA.

Both parties have made unsupported assertions in their respective memoranda of law about whether owner-drivers are eligible beneficiaries of the Funds.[4] Yet the Court need not resolve that issue because even if owner-drivers could participate in the Funds, they could not participate *as employees of RNA*. This distinction is important because an employers' contributions to trust funds, in order to fall within the exceptions delineated in the LMRA, must be for the benefit of the "employees of [the] employer." 29 U.S.C. § 186(c)(5).

In the instant case, owner-drivers are independent contractors and are therefore precluded from the LMRA's definition of "employee." *Mrowicki*, 44 F.3d at 460. Common law agency principles articulated in *Nationwide Mutual Insurance Company v. Darden* are used to determine whether an individual constitutes an employee under the LMRA. 503 U.S. 318, 323-24, 112 S. Ct. 1344, 1348-49 (1992); 44 F.3d at 460.[5] In determining whether a hired party is an employee,

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4. *See, e.g.*, Def. Memo, in S.J. at 12 (owner-drivers not eligible to participate in the Funds); Def.'s Resp. in Cross-Mot. at 7 (same); Pl. Resp. in Cross-Mot. at 9 (owner-drivers qualify for benefits from trust fund); Pl. Reply in Cross-Mot. at 5 ("The fund trustees have never taken the position that these owner-drivers are not eligible [to benefit from the Funds]").

5. In *Mrowicki*, the court deemed irrelevant the employment status of individuals under the common law where an employer's obligation to make payments to a fund was measured by the number of hours worked. 44 F.3d at 462. As discussed previously, the CBA at issue in this case does not compel contributions on an hourly basis. Therefore, a determination of the status of owner-drivers under common law principles, even if unnecessary for establishing the legality of an employer's obligation to contribute on an hourly basis, becomes relevant to an analysis of the instant case.

the courts must consider "the hiring party's right to control the manner and means by which the product is accomplished."[6] 503 U.S. at 322, 112 S. Ct. at 1348. "[A]ll the incidents of the relationship must be assessed and weighed with no one factor being decisive." *Id.*

An examination of the relationship between owner-drivers and RNA indicates that owner-drivers take charge of the manner and means of their own work. Conversely, RNA has extremely limited control over owner-drivers. Owner-drivers sign leases with RNA to work for a set term of three years, but the lease may be terminated at will by either party without penalty. Owner-drivers are free to lease their services to other carriers during the term of their RNA lease, and they can and do refuse to work for RNA for any reason. It is further undisputed that owner-drivers own their own trucks, provide for storage of their own trucks, take responsibility for maintenance of the trucks, pay for their own gas, pay their own taxes, and provide their own

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6. The Supreme Court announced the following factors relevant to the inquiry:

> the source of instrumentalities and tools; the location of the work; the duration of the relationship between parties; whether the hiring party has the right to assign additional projects to the hired party; the extent of the hired party's discretion over when and how long to work; the method of payment; the hired party's role in hiring and paying assistants; whether the work is part of the regular business of the hiring party; whether the hiring party is in business; the provision of employee benefits; and the tax treatment of the hired party. 503 U.S. at 322, 112 S. Ct. at 1348.

insurance coverage. Owner-drivers are paid on a Form 1099 basis and do not receive an hourly wage; rather, they are paid a gross percentage of the amount paid to RNA by its customers. Owner-drivers also sign independent contractor agreements with RNA.

RNA directs owner-drivers who accept assignments to the location and time of the pickup and/or delivery of a load. When owner-drivers lease their services to RNA and operate under RNA's certificate of authority, they are provided with signs to be placed on the side of their truck cab. The sign reads: "Leased To & Operated By Rock N' Around Trucking, Inc." Even if the last two considerations — namely, RNA's ability to tell owner-drivers when and where an assignment will take place as well as the signs posted on the trucks during assignments weigh in on the side of qualifying owner-drivers as employees, these factors cannot and do not overcome the wealth of evidence that tip the scale in favor of qualifying them as independent contractors.

The totality of the circumstances dictate that owner-drivers are indeed independent contractors. Consequently, RNA cannot contribute to the Funds on behalf of owner-drivers under § 302 of the LMRA. *See Todd*, 710 F.2d at 583-84 (finding that an employer could not be required to make trust contributions on behalf of owner-operators because, in light of the substantive nature of their relationship with their "employer," owner-operators could not be transformed by contractual language to employees for the purpose of § 302); *Joint Council of Teamsters No. 42, Int'l Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America v. Assoc. General Contractors of*

California, Inc., 520 F. Supp. 3, 4 (C.D. Cal. 1980), *aff'd*, 662 F.2d 531 (9th Cir. 1981) ("[O]wner-operators are not employees within the meaning of § 302 of the LMRA and [ ] contributions by Employers to plaintiffs' trust fund on their behalf is illegal.")

IV. Conclusion

For the foregoing reasons, RNA's motion for summary judgment is GRANTED. The Funds' cross-motion for summary judgment is accordingly DENIED as moot. This case is CLOSED.

Enter:

s/ David H. Coar
David H. Coar
United States District Judge

Dated: February 1, 2000

Appendix B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Case Number 99 C 1975

Lou Mazzei

v.

Rock-N-Around Trucking

JUDGMENT IN A CIVIL CASE

* * *

■ Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS HEREBY ORDERED AND ADJUDGED that The Defendant's Motion for Summary Judgment is Granted. The Funds' Cross Motion for Summary Judgment is accordingly Denied as Moot.

Summary Judgment is hereby entered in favor of the defendant Rock-N-Around Trucking, Inc. and against the plaintiff, Lou Mazzei, Trustee of the Local 786 Building Material Teamsters and Helpers Welfare Fund and Local 786 Building Material Teamsters and Helpers Pension Fund. There being no further matters before this Court, this case is closed.

Appendix B

Michael W. Dobbins,
Clerk of Court

Date: 2/1/2000

s/ Patricia McQurter-Figgs
Patricia McQurter-Figgs,
Deputy Clerk